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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Note by the Secretariat

By letter dated 29 May 1991, the Secretariat received a working paper prepared by Mrs. Christy Ezim Mbonu on "Human rights dimensions of population transfer, including the implantation of settlers and settlements". Mrs. Mbonu requested that the working paper be transmitted to the Sub-Commission at its forty-third session under item 8 of the provisional agenda.

The Secretariat has the honour to submit, attached to the present note, the working paper prepared by Mrs. Mbonu.

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HUMAN RIGHTS DIMENSIONS OF POPULATION TRANSFER, INCLUDING THE IMPLANTATION OF SETTLERS AND SETTLEMENTS

Working paper submitted by Mrs. Christy Ezim Mbonu

Introduction

1. In its resolution 1990/17 of 30 August 1990, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, considering that the policy and practice of the implantation of settlers and settlements can constitute a serious violation of human rights of the original inhabitants of the countries concerned as well as of the settlers themselves, and concerned that the movement of people is often achieved either without free and informed consent of those people being moved or without the consent of those people into whose territory they are being moved, decided to consider this matter further at its future sessions.

2. The purpose of this working paper is to suggest the direction the Sub-Commission might usefully take in studying this issue further at its forty-third and future sessions.

Definition of terms

3. The activities with which we are concerned have taken place with increasing frequency in all parts of the world, and are referred to by various names such as population transfer, population redistribution, resettlement, colonization, transmigration and relocation.

4. It will be useful to distinguish between "spontaneous" migration, and "induced" or "sponsored" population movements. Governments often encourage resettlement by providing logistical support, recruiting and transporting settlers, clearing land and building infrastructure such as houses and schools. Governments sometimes also encourage migration through inaction, for example, by failing to deal with the problems of overcrowding, landlessness or unemployment in parts of the country. A number of recent studies regard both spontaneous and induced migration as simply a matter of the degree to which government action, or inaction, contributes to the "push" and "pull" on population movements.

5. A distinction also can usefully be drawn between "villagization" schemes and "colonization". Villagization is the concentration of a relatively dispersed rural population into centralized settlements as a means, inter alia, of improving access to public services, providing better security or promoting industrialization. Colonization, on the other hand, is the movement of a population group from one part of the country to another part of that country, or to another country. While villagization changes the social structure of a single rural society, colonization involves superimposing two or more societies, which will be referred to here as "hosts" and "migrants".

6. Resettlement has often been pursued as a development strategy in its own right, chiefly as a strategy for the agricultural development of thinly populated, isolated or marginal lands. It has also been the result of many large-scale construction projects such as mining, power dams, industrial

plants and commercial plantations. People displaced by such projects have often been described as "development refugees", since their problems, needs and treatment tend to be similar to those of people displaced by natural disasters or armed conflict. "Displacement" will be used here to refer to project-related resettlement.

7. Contemporary studies frequently refer to "frontiers". As used in this working paper, a frontier is an area affected by colonization, in other words, by a mixing of socio-culturally and economically diverse migrant and host populations.

8. For the sake of simplicity, the term "resettlement" will be used here, except where greater specificity is required.

Objectives of resettlement

9. The official objectives of resettlement projects are various, and often change during the lifetime of a single project. The objectives most often cited by Governments include:

(a) Relieving population pressures in cities, or in densely populated agriculatural areas;

(b) Alleviating landlessness in agricultural areas;

(c) Redressing regional imbalances in socio-economic development;

(d) Improving the welfare of peasants and rural workers;

(e) Increasing agricultural production for food security or export.

10. Resettlement projects have sometimes targeted indigenous peoples and ethnic, linguistic or religious minorities, either as migrants or hosts, with the aim of integrating them into national society. Recent examples include PAMAMIN in the Philippines and Thailand's Hill Tribe Resettlement programme. Villagization has been actively pursued among the indigenous peoples of the Arctic, and with nomadic peoples in Asia and Africa. Romania's "systematization" programme, adopted in 1972, involved both villagization and the complete elimination of about half of all existing settlements, purportedly to promote industrialization. This would have had the effect of breaking up and integrating a large number of ethnically distinct communities, notably of Romany (gypsies).

11. Some projects have strategic or military objectives, for example, the resettlement of certain dissident political elements in Indonesia, particularly in 1965; the establishment of strategic settlements along the border between Thailand and Malaysia; the relocation of Nicaraguan villages affected by armed conflict in the 1980s; or the villagization of indigenous peoples in other disturbed areas of Central America. At times, the line between economic and strategic objectives is unclear. Such was the case in Ethiopia in the 1980s when, in the wake of severe drought, large numbers of people were relocated from the conflict-torn Tigrey region to Oromo in the

south-west. The massive resettlement of Kampuchean people by the Khmer Rouge also blurred distinctions between development objectives and military or political control.

12. In this regard, particular mention should be made of large-scale forced relocations of the majority population of South Africa, as part of "betterment" projects or the establishment of so-called "homelands", and the Israeli colonization of the Occupied Territories.

Resettlement and development strategy

13. As a population measure, resettlement, schemes generally fall far short of their objectives. Under Indonesia's ambitious transmigration programme, total migration from Java in 1975-1980 was 600,000 compared with a natural increase during the same period of 8 million. There were major demographic and social impacts on host areas, but little relief for the sending areas. Sri Lanka succeeded in moving about 4 per cent of its national population from the Wet Zone to the Dry Zone over more than 30 years, but the cost per capita was considerable, and there was arguably an adverse impact on ethnic relations on the island. The most frequently cited reason for the failure of resettlement projects to meet their population targets is high cost.

14. Resettlement schemes also generally have low benefit-cost ratios and fail to achieve their economic objectives. Settlers in Indonesia reportedly barely succeeded in providing for their own subsistence and soil productivity declined. In Amazonia, only the colonists who were poorest to begin with have made modest gains in income, according to a number of recent studies, while the economic welfare of other settlers fell. The financial costs of sponsored resettlement increased markedly in the 1970s, as Indonesia and other Governments recognized the need for greater technical inputs and assistance to settlers, but this forced them into greater consumption of official development assistance (ODA) and greater debt.

15. In some instances, resettlement did contribute to food security, as for example in Somalia, which sponsored major resettlements in the wake of the 1974 drought. However, Ethiopia's planned 1984 relocation of some 1.5 million persons (an estimated 575,000 were actually moved) was not accompanied by technical or financial assistance and made the famine worse. Resettlement schemes tend to target relatively marginal lands, so that while the total area of the country under cultivation increases, overall agricultural productivity falls.

16. Reasons cited for the poor economic performance of transmigration in Indonesia include poor soils, land disputes with host populations, isolation of settlers from markets, lack of adequate housing, lack of financial assistance to acquire tools or pay for clearing, and failure to teach migrants about ecological conditions on the frontier (van der Wijst, 1985).

17. Evironmental problems are frequently reported from resettlement projects. Settlers may be completely unfamiliar with the ecosystems to which they have moved, and tend to overexploit soils and wildlife. Many of these areas originally had low population densities precisely because of the inherent fragility or low productivity of their soils.

18. Small-scale farmers and peasants in most countries depend upon a mix of cultivation and non-farm employment to meet their subsistence needs, but little non-farm employment is available in frontier areas. As a result, settlers often find themselves worse off than before, and there may be neither land nor jobs for their children. Frontier areas experience unemployment, poverty and out-migration, unless government agencies invest in economic diversification and industrialization, not merely agriculture.

19. Sponsored migrants usually make up only a small proportion of the population in colonized areas, often as little as 10 per cent, because official projects act as nuclei, attracting spontaneous movement from other parts of the country. Transportation corridors such as highways are particularly important as "development poles", with notable recent examples in Amazonia.

20. Until the 1970s, resettlement activities were rarely included in the design and financial calculations of construction projects, hence the total economic costs of the project were higher than anticipated and frequently outweighed the benefits that originally were projected (Partridge, 1989). This, too, had an adverse impact on national growth and indebtedness, in addition to the often catastrophic effects on the populations that were moved.

Social impacts of resettlement

21. Resettled people have rarely been given a role in planning their move or designing their new communities. Settlements have frequently been run like refugee camps, with settlers' lives completely dominated by bureaucrats. These conditions breed feelings of powerlessness and resentment, particularly in cases of forced relocation, and increased psychological stress. Stress associated with resettlement can lead to health problems, family violence, suicide, alcoholism and drug abuse, and crime.

22. Resettlement also subjects people to changes in climate and diet, and, at least in the short term, settlers may have to contend with inadequate housing and poor sanitation as well. Villagization in the Arctic has been associated with significant increases in diet-related health problems including cardiovascular disease, diabetes and cancer. These health effects of resettlement can be severe, and have not been given adequate attention in project planning.

23. New settlements also usually involve inappropriate, standardized housing patterns that can have a significant adverse effect on social and cultural life. Mixing unrelated kinship groups in a dense cluster of row houses intensifies contacts and conflict among individuals and families. Traditional forms of social control may fail, and the loss of privacy can aggravate stress and conflict.

24. Efforts to combine people from different social or ethnic groups in new settlements have also resulted in social tensions and conflict. In Sri Lanka, for instance, an early policy of promoting "melting pot" settlements was eventually abandoned in favour of allowing communities to remain distinct along traditional ethnic and caste lines. This did not eliminate social conflict in colonized areas, but changed it from a problem within settlements to a problem between settlements.

25. Socio-economic differentiation occurs among settlers from similar backgrounds as well. Those individuals who secure the best parcels of land or retain strategic kinship ties to their home villages may have greater access to financial capital and labour. With these advantages they can buy up other settlers' land, reproducing the very problem of landlessness that most resettlement projects are designed to redress. The mechanization of agriculture, with its high demands for financial capital, accelerates this process of land concentration.

26. Greater social differentiation has also resulted from large-scale construction projects. Displaced persons have rarely received enough cash compensation to acquire comparable lands elsewhere, forcing them either to cultivate poorer soils or to seek wage employment, although they lack non-agricultural skills.

27. A number of studies have shown that resettlement and displacement result in greater vulnerability and exploitation of women, especially in cases where non-farm employment is not available to supplement farm incomes or where settlements are dominated by administrators who have discretionary powers over settlers' lives.

Impacts on host populations

28. The lands selected for resettlement are often already being used by people who have their own systems of land use and land tenure. The host populations are usually indigenous and tribal peoples, whose low-intensity forms of economic activities, such as hunting, gathering and horticulture, are not regarded as contributing to national development by government planners.

29. In many instances, villagization of the host population, or their removal to "reserves", has been pursued as a means of making more land available for settlers. The host populations' economy may collapse as a result, leading to a great disparity in land ownership and economic welfare between the settlers and hosts, and a legacy of jealousies and antagonism.

30. Colonization may destroy the traditional subsistence base of the host population. Hunting and gathering societies maintain a delicate balance between population size and the abundance of wildlife in their territories. Colonists usually hunt to supplement their food supply, especially in the first few years, when they are still clearing their lands. This forces wildlife stocks into decline. Clearing and road-building also have adverse effects on the productivity of ecosystems, and can undermine the food supply for indigenous or tribal peoples.

31. Host populations may also be adversely affected by flooding, soil erosion and contamination of fresh water supplies caused by excessive deforestation, land clearing and planting, as has happened for example in the Himalayas and Amazonia, as well and in Canada and the Soviet Union.

32. Although colonists frequently lack the financial resources and skills needed to take full advantage of their new lands, they usually have more resources and education than host populations and this can result in an exploitative relationship.

33. In some instances, colonization has transformed the ethnicity of target areas. A widely cited example is the province of Lampung, on Sumatra, which is now predominantly Javanese. Another is Mindanao, in the Philippines, where a sponsored influx of predominantly Christian settlers triggered resentment and demands for autonomy among local Muslims in the 1970s. Romania's systematization programme, had it continued, would have amalgamated ethnic minorities into larger towns controlled by the ethnic and linguistic majority.

34. It is often easier to distribute relatively undeveloped land than to engage in genuine land reforms within densely settled areas of the country. Few areas are truly unpopulated, however, so that the effect of colonization may simply be to redistribute land from weaker ethnic and regional groups to settlers from politically stronger groups and regions.

General human rights considerations

35. The sheer scale of population displacements resulting from recent construction projects is a cause for concern. Cernea (1990) estimates that 8-15 million people will be displaced by major dam projects begun in the early 1980s. Smaller-scale displacements from the construction of mines, industrial and transportation facilities, and urban housing projects are a growing phenomenon as well, in all parts of the world, and probably involve even larger total numbers.

36. Freedom of movement and residence. Involuntary resettlement and displacement may raise issues under article 12 (1) of the International Covenant on Civil and Political Rights (right of everyone to "liberty of movement and freedom to choose his residence"), as well as article 8 (3) (prohibition of forced labour). The conventions on forced labour adopted by the International Labour Organisation (Nos. 29 and 105) are also relevant in this context. The distinction between voluntary and involuntary resettlement is often unclear, as when economic conditions in parts of a country are permitted to deteriorate to the point that migration becomes a matter of survival.

37. Equality of access to resources. Resettlement often leads to the impoverishment of host populations, and to the impoverishment of many of the migrants or settlers. This may violate articles 2 and 3 of the International Covenant on Economic, Social and Cultural Rights, which guarantee to everyone the progressive realization of all of the rights contained in that Covenant, without discrimination, such as the rights to an adequate standard of living (article 11), the highest attainable standard of health (article 12) and education (article 13). The most general formulation of this principle can be found in article 8 (1) of the Declaration on the Right to Development, which refers to "equality of opportunity for all in their access to basic resources".

38. Participation in decision-making. Resettlement has far-reaching effects on the lives of all of the people concerned, and is therefore the kind of decision in which popular participation is essential. The right and opportunity "to take part in the conduct of public affairs" is guaranteed by article 25 (1) of the International Covenant on Civil and Political Rights, and article 8 (2) of the Declaration on the Right to Development emphasizes the importance of "popular participation in all spheres". The Global

Consultation on the Right to Development as a Human Right concluded that "development must be equitable from the viewpoint of the peoples, groups, and individuals affected", which can only be determined through democratic processes (E/CN.4/1990/9/Rev.1, para. 160).

39. The Global Consultation also noted that "indigenous peoples have been throughout history the victims of activities carried out in the name of national development", hence "their direct participation and consent in decisions regarding their own territories are essential to protect their right to development" (E/CN.4/1990/9/Rev.1, para. 157). In general terms, Sub-Commission resolution 1990/17 expressed concern "that the movement of people is often achieved either without free and informed consent of those people being moved or without the consent of those people into whose territory they are being moved". With respect to the particular situation of the relocation of Navajo and Hopi families, the Sub-Commission, in its resolutions 1989/37 and 1990/34, underscored the need for "the effective participation of the families and communities affected".

40. Cultural rights and rights of minorities. Resettlement has often targeted specific social or ethnic groups, such as indigenous peoples or minorities, or affected them disproportionately. Discrimination in the enjoyment of economic, social and cultural rights is prohibited by article 5 of the Convention on the Elimination of All Forms of Racial Discrimination, and by article 2 (2) of the International Covenant on Economic, Social and Cultural Rights. At the extreme, "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part", is a violation of the Convention on the Prevention and Punishment of the Crime of Genocide, and the International Convention on the Suppression and Punishment of the Crime of Apartheid. The latter convention also expressly forbids the use of villagization or establishment of "reserves" as a means of excluding a particular group from national economic and social life.

41. Resettlement may fall short of interfering with a group's health or physical survival, but undermine its cultural survival. Article 27 of the International Covenant on Civil and Political Rights guarantees persons belonging to ethnic, religious and linguistic minorities "the right, in community with the other members of their group, to enjoy their own culture, to profession and practise their own religion, or to use their own language". Relocation or dispersal of the group, or its amalgamation with others, can deprive its members of the "community" they need to exercise these rights, even if their cultural, religious or linguistic activity is not suppressed directly. Article 30 of the Convention on the Rights of the Child reiterates this principle, and adds a reference to "indigenous" children. Moreover, the Convention on the Rights of the Child refers to "the desirability of continuity in a child's upbringing" (article 20), and the role of the "extended family or community" (article 5), which can be disrupted by the displacement, relocation, or dispersal of the child's community.

Specific international standards

42. Since 1988, the World Bank has taken the initiative of developing policies for mitigating the effects of project-induced displacements. The Bank's June 1990 operational directive on this subject provides:

> All involuntary resettlement should be conceived and executed as development programmes, with resettlers provided sufficient investment resources and opportunities to share in project benefits. The displaced should be (i) compensated for their losses at full replacement cost prior to the actual move; (ii) assisted with the move and supported during the transition period in the resettlement site; and (iii) assisted in their efforts to improve their former living standards, income earning capacity, and production levels, or at least to restore them. Particular attention needs to be paid to ensure that the poorest groups get net benefits.

43. The World Bank also takes the position that national governments should assume "full financial responsibility" for the consequences of projects involving resettlement (Cernea, 1988; 1990).

44. In its General Comment No. 2, concerning "international technical assistance measures", the Committee on Economic, Social and Cultural Rights stresses the "importance of seeking to integrate human rights concerns into development activities," and suggests that international agencies scrupulously avoid involvement in projects which, for example, "involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation" (E/1990/23, annex III).

45. In the special case of indigenous peoples, ILO Convention No. 107 (art. 12) permits involuntary removals "in the interest of national economic development", but requires in such cases that "they shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development". ILO Convention No. 169, which revises Convention No. 107, goes further in discouraging removals. Article 16 provides:

> 1. Subject to the following paragraphs of this article, the peoples concerned shall not be removed from the lands which they occupy.
>
> 2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.
>
> 3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. Where such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

Conclusions and suggestions

46. Resettlement schemes may sometimes be justified as responses to natural disasters, or as elements of regional development programmes, but always involve a high likelihood of abuse. Resettlement should be avoided whenever possible, minimized if it is unavoidable, and always scrutinized closely for violations of human rights.

47. Displacement frequently results in the impoverishment of both the migrant and host populations. Cernea (1990) summarizes the factors leading to impoverishment as landlessness, homelessness, joblessness, marginalization, food insecurity, increased mortality and morbidity, and social disarticulation.

48. Colonization generates social tensions in frontier areas between migrants and hosts, and also among the settlers themselves. There is a high risk of racial and ethnic discrimination, and the emergence of new forms of ethnic conflict. It is particularly important to respect the forms of land use and land tenure that already exist in the host community.

49. Governments should provide for mitigation of the adverse impacts of resettlement on both migrants and hosts, and to ensure, as far as possible, a relative equality of access to resources between migrants and hosts.

50. Participation in all aspects of decision-making, from selection of resettlement sites to clearing and construction, is essential as a matter of fundamental human rights, and increases the likelihood that new settlements will become stable and productive. As far as possible decisions should be based on the free informed consent of the groups of people affected.

51. Relevant organizations and agencies of the United Nations system have a responsibility to ensure that their operational activities do not encourage unnecessary resettlements, or contribute to resettlement schemes which may violate human rights standards.

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